

IN THE CIRCUIT COURT OF THE UNITED STATES.
Northern District of Illinois. Eastern Division.

In Equity. No. 29,500.

SUITE ON BERLINER GRAMOPHONE PATENT NO. 534,543.

Victor Talking Machine Company and the United States
Gramophone Company,
Complainants.

vs.

O'Neill-James Company,
Defendant..

SUR MOTION FOR PRELIMINARY INJUNCTION.

COMPLAINANTS' REPLYING AFFIDAVIT OF FREDERICK A. BLOUNT.

STATE OF ILLINOIS)
:SS.
COUNTY OF COOK)

FREDERICK A. BLOUNT, being duly sworn according to
law, deposes and says:

I am an attorney at law and assistant to Horace
Pettit, Esq., Counsel for the complainants in the above-
entitled suit and am familiar with the proceedings hereto-
fore had in said suit. On June 10, 1909 I accompanied
Deputy U. S. Marshal Middleton to Auburn Park, Illinois,
who had charge of the service of the restraining order
entered herein on June 10, 1909 and of the subpoena, at
which place Winfred B. James, Secretary of the said defen-
dant Company, resided and where he was served with the said

restraining order and subpoena by said Deputy U. S. Marshal.

After said service, while the said Deputy Marshal and I were waiting at the railroad station to return to Chicago, the said James came over to the telegraph office at the said railroad station and thereafter introduced himself to me as the said Winfred B. James, Secretary of the defendant Company, while he was conversing with the said Deputy Marshal, Mr. James inquiring when the motion for preliminary injunction was to be heard and I stating that I was one of the attorneys for the complainant and that the motion was to be heard on Monday, June 14, 1909. Mr. James then stated that he was wiring East to the President of the defendant Company the fact of the said restraining order having been granted and then went on and stated to me that he did not care anything about the restraining order anyway inasmuch as he had that afternoon at four o'clock received a telegram from the President of defendant Company advising him that a deal had just been closed between the defendant Company and the Columbia Phonograph Company whereby the said Columbia Phonograph Company had agreed to take over from O'Neill-James Company all the Hawthorne & Sheble goods which the defendant Company had in stock and to hold the defendant free from damages. He then went on to say that he did not care a "snap of his fingers" for the restraining order as it came too late as they had already made the agreement with the said Columbia Company. I advised him, however, that it would not be wise to believe any of the infringing goods under the circumstances for the defendant might then be held for contempt of Court. Mr. James then replied that the defendant was alright anyway as the Columbia Company had agreed to protect it.

Frederick A. Blount.

Subscribed and sworn to before me this 22nd day of June, 1909.

M. A. Kiddie
Notary Public, Cook County, Ill.

**REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION**

RG 21 U.S. District Court, Northern District of Illinois
Circuit
at Chicago; Equity Case Files, 1871-1911;
Equity Case File 24500, Victor Talking Machine
Company and the U.S. Gramophone Company vs.
O'Neill-James Company; Complainants'
Replying Affidavit of Frederick A. Blount,
pp 1-2.

Circuit Court IN THE CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois,

Eastern Division.

In Equity No. 29,500.

DEC 27 1909

SUIT ON BERLINER GRAMOPHONE PATENT NO. 534,543.

Kohlsaat, J.

Victor Talking Machine Company and United States
Gramophone Company,

Complainants,

vs.

O'Neill-James Company,

Defendant.

FINAL DECREE.

And now, to wit, this 27th day of December A. D.,
1909, a decree for preliminary injunction against the above
named defendant, as prayed for in the bill of complaint,
having been duly made and entered herein on June 24, 1909, and
a preliminary injunction having been duly issued in accordance
with the said decree for preliminary injunction and served upon
the above named defendant, and the said defendant having
thereafter taken an appeal to the United States Circuit Court
of Appeals for the Seventh Circuit from the said decree grant-
ing preliminary injunction and the said preliminary injunction
having been partially superseded and stayed pending the deter-
mination of the said appeal by the said Circuit Court of
Appeals, and it further appearing that upon motion of counsel
for the said O'Neill-James Company the said appeal to the said

Circuit Court of Appeals has been dismissed, and the said parties now having consented to the entry of the following decree without costs to either party as against the other, it is

ORDERED, ADJUDGED AND DECREED and the Court doth hereby Order, Adjudge and Decree as follows, to wit,-

I. That the Letters Patent No. 534,543, dated February 19, 1895, for Improvements in Gramophone, granted to the United States gramophone Company as the assignee of Emile Berliner, are good and valid, as to claims 5 and 35 thereof.

II. That the complainants herein, the Victor Talking Machine Company and the United States gramophone Company, are now and have been since October 5, 1901, the sole and exclusive owners of the legal and equitable title in and to the said Letters Patent No. 534,543 in suit.

III. That the defendant, O'Neill-James Company, has infringed upon said Letters Patent, and particularly claims 5 and 35 thereof, by the use and sale of sound recording and sound reproducing apparatus containing the improvements and invention specified in said claims 5 and 35 of said Letters Patent No. 534,543, which claims read as follows:

"5. The method of reproducing sounds from a record of the same which consists in vibrating a stylus and propelling the same along the record by and in accordance with the said record, substantially as described."

"35. In a sound reproducing apparatus consisting of a traveling tablet having a sound record formed thereon and a reproducing stylus shaped for engagement with said record and free to be vibrated and propelled by the same, substantially as described."

IV. It is further ordered, adjudged and decreed that

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RG 21, U.S. Circuit Court, Northern District of
Illinois at Chicago; Equity Case File 29500,
Victor Talking Machine Co. and U.S. Gramophone Co.
vs. O'Neill-James Co.; Final

a perpetual injunction be issued in this case against the said defendant, O'Neill-James Company, restraining and perpetually enjoining it, and each of its associates, attorneys, servants, clerks, agents and workmen, and all persons claiming or holding under it, from manufacturing, using or selling or in any way disposing of sound reproducing apparatus, records, or devices embodying the subject-matter of claim 35, of the patent in suit, and from manufacturing, using or selling or in any way disposing of apparatus, records, or devices which embody the method of claim 5 of said patent, or intended to be operated in accordance with said method claim, and from using or employing in any way said method specified in claim 5 of the patent in suit.

by agreement of parties
V. It is further ordered, adjudged and decreed¹ that the said defendant shall, upon the entry of this decree, deliver over to the complainants' solicitor, William O. Belt, Esq., all the infringing goods consisting of disc talking machines and disc talking machine records, which the said defendant had in stock or which was in the control of the said defendant on November 29, 1909, and that all title to and ownership of the said infringing goods shall thereupon pass to the above named complainants.

VI. It is further ordered that all bonds and each of them, heretofore given in the above entitled suit, by either of the parties to the above entitled suit, as security for damages or costs be, and the same are hereby released, cancelled, annulled and made void and of no effect whatsoever, and that

all physical exhibits heretofore filed herein may be withdrawn by counsel for the respective parties.

VII. It is further ordered, adjudged and decreed that the supersedeas and stay granted herein on June 25, 1909, of the preliminary injunction heretofore issued in this suit pursuant to the decree entered herein on June 24, 1909, be and the same hereby is vacated and set aside and the said preliminary injunction be and the same hereby is reinstated with full force and effect.

Entered Dec 27 1909

Kohlmeyer

The entry of the foregoing decree is hereby consented to.

Horace Pettit

Of Counsel for Complainants.

Frank Meyer

Of Counsel for Defendant.

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RG 21, U.S. Circuit Court, Northern District of Illinois
at Chicago; Equity Case Files, 1871-1911;
Equity Case File 29500, Victor Talking Machine
Co. and U.S. Gramophone Co. vs. O'Neill -
James Co.; Final Decree, pp 1-4.